

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.496 of 2007

Date of decision : 20.02.2007

Amar Singh

.....Appellant

versus

Mahabir Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.N.S.Shekhawat, Advocate for the appellant.

* * *

ORDER

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby a suit for declaration that the plaintiff is owner of 1/6th share i.e. 38 kanals 19 marlas out of the total land measuring 116 kanals 18 marlas was decreed.

One Badlu and Amar Singh were the joint owners of the land. Badlu through his General Power of Attorney Subh Ram sold the land measuring 8 kanals to the plaintiff vide registered sale deed dated 8.6.1994. It is the case of the plaintiff that Badlu represented that the land purchased by the plaintiff has fallen to the share of Badlu in a private partition. Since Badlu is full fledged owner of the said land, therefore, the plaintiff is owner in possession of the land purchased vide the aforesaid sale deed.

It was the stand of the defendant that Badlu was owner to the extent of 1/2th share of the land and the defendant No.8-present appellant Amar Singh is owner to the extent of remaining half share.

Earlier, Badlu has transferred 3/75 share in favour of defendant No.2 by way of a family settlement which was recognized by the Civil Court on 15.6.1985. The defendant-appellant denied the private partition and also denied that Badlu was owner in possession of the land sold to the plaintiff.

Both the Courts below have recorded a concurrent finding of fact that there was a private partition between the parties and the land comprised in Rect.No.18, Khasra No.23, measuring 8 kanals has fallen to the share of Badlu and that the sale deed has been validly executed. To return such a finding, the Courts below have relied upon the statement of DW-1-appellant, who deposed the he and Badlu used to cultivate the land separately to the extent of their respective shares.

Learned counsel for the appellant has vehemently argued that the plaintiff has not examined the revenue record before he purchased the suit property. Therefore, the stand taken by the plaintiff that there was private partition cannot be believed. Still further, the statement of Amar Singh, who appeared as DW-1, has been misread as he has not deposed that private partition, as is sought to be inferred by the Courts below, has not been effected.

After hearing learned counsel for the appellant, I do not find that the findings recorded by the Courts below suffer from any patent illegality or irregularity. With the help of learned counsel for the appellant, I have gone through the statement of DW-1 present appellant. He has clearly deposed that he and Badlu used to cultivate separately the land falling to their respective shares. Thus, inference drawn by the Court that there was private partition, on the basis of statement of the appellant,

cannot be said to be unwarranted in any manner. The evidence on record is clear and categorical that there was private partition between the parties, therefore, the non examination of the revenue record by the plaintiff is immaterial.

The finding of fact recorded by the Courts below is sought to be disputed in the present appeal. I do not find that the findings recorded may give rise to any substantial question of law for consideration of this Court in second appeal.

Dismissed.

February 20, 2007

**mohinder*

(HEMANT GUPTA)
JUDGE